

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Nos. IBFS SAT-LOA-19950929-
PanAmSat Corporation)	00130/131; SAT-LOA-19950929-
)	00204/00208
Order Adopting Protective Order)	
)	
)	FOIA No. 2002-124

ORDER ADOPTING PROTECTIVE ORDER

Adopted: March 14, 2002

Released: March 15, 2002

By the Deputy Chief, Satellite and Radiocommunication Division:

1. By this Order, we require PanAmSat Corporation (PanAmSat) to disclose information to Pegasus Development Corporation ("Pegasus") pursuant to the Protective Order included as Appendix A to this Order. By this action we allow Pegasus to review documents filed by PanAmSat while protecting the confidentiality of competitively sensitive information.

2. In January 2001, the International Bureau (Bureau) modified PanAmSat's license to launch and operate a satellite system in the geostationary satellite orbit to provide fixed-satellite service in a portion of the Ka-band.¹ At that time, the Bureau also assigned implementation milestones for the construction, launch, and operation of the satellite system. The first implementation milestone requires PanAmSat to commence construction of its first satellite by January 2002. In order to verify compliance with the first implementation milestone, on January 28, 2002, the Bureau requested that PanAmSat submit a copy of an executed contract verifying that construction has commenced and that PanAmSat's satellites will be built within the time frame specified in its license.² In response, PanAmSat submitted, under cover of its letter to the Bureau, dated February 8, 2002, a copy of its satellite construction contract with Orbital Sciences Corporation (the "Contract"). PanAmSat's also filed a request for confidential treatment of the Contract.

3. On February 19, 2002, Pegasus filed a request to inspect the Contract pursuant to the Freedom of Information Act (FOIA).³ PanAmSat responded to Pegasus's FOIA on February 27, 2002.⁴

¹ PanAmSat Corporation, Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed Satellite Service, *Order and Authorization*, 16 FCC Rcd 2490 (Int'l Bur. 2001).

² Letter from Thomas Tycz, Chief, Satellite Radiocommunication Division, to Joseph A. Godles, Counsel for PanAmSat Corporation, dated January 28, 2002.

³ 5 U.S.C. § 522, *et. seq.* See Letter to Patricia T. Quartey, Managing Director, FCC from Bruce D. Jacobs, Counsel for Pegasus Development Corporation, dated February 19, 2002.

PanAmSat represented that it had no objection to making its contract available to Pegasus's outside counsel pursuant to a protective order issued by the Commission. In reference to review of the contract by Pegasus's inside counsel, PanAmSat states it should not have to respond until the Commission clarifies, in an unrelated proceeding, the "competitive decision making" standard governing review by in-house counsel.⁵ The attached Protective Order does not limit access only to outside counsel, which might hamper effective advocacy. Instead, we believe the eligibility provision set forth in the Protective Order is sufficient to protect PanAmSat's interests. Pursuant to the terms of the Protective Order, PanAmSat will have the opportunity to object to disclosure of the contract to Pegasus's in-house counsel that PanAmSat maintains may be involved in competitive decision making as defined in the Protective Order. The Commission will review any objections in the context of this proceeding as necessary.

4. Pegasus, together with any other individuals or entities that subsequently submit a request, pursuant to FOIA, to review the Contract are each hereafter referred to as a "Reviewing Party."

5. We conclude that requiring PanAmSat to disclose the Contract to a Reviewing Party pursuant to the terms of a protective order will provide adequate protection to the confidential information included in the Contract, without depriving a Reviewing Party of a meaningful opportunity to comment, as required by the Administrative Procedure Act. Consequently, the Bureau adopts the attached Protective Order, attached in Appendix A. We require PanAmSat to provide copies of the Contract to a Reviewing Party, once that Reviewing Party has executed and delivered the Acknowledgement of Confidentiality that is part of the Protective Order attached to this Order at Appendix B.

6. Accordingly, IT IS ORDERED that PanAmSat Corporation IS REQUIRED to provide to Pegasus Development Corporation (and any other Reviewing Party that subsequently becomes a party to the Protective Order), a copy of the Contract under the terms of the Protective Order attached to this Order, once Pegasus Development Corporation or any other Reviewing Party, as appropriate, has executed such Protective Order.

7. IT IS FURTHER ORDERED that comments with respect to the information filed pursuant to this protective order must be filed on or before April 15, 2002 and responses must be filed on or before April 25, 2002.

(...continued from previous page)

⁴ See Letter to Patricia T. Quartey, Managing Director, FCC from Joseph A. Godles, Counsel for PanAmSat Corporation dated February 27, 2002.

⁵ *Id.* at 2.

8. This Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Fern Jarmulnek
Deputy Chief
Satellite and Radiocommunication Division

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Nos. IBFS SAT-LOA-19950929-
PanAmSat Corporation)	00130/131; SAT-LOA-19950929-
)	00204/00208
)	
)	
)	FOIA No. 2002-124

APPENDIX A

PROTECTIVE ORDER

1. *Introduction.* In response to a letter dated January 28, 2002 from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau (Bureau), to PanAmSat Corporation (PanAmSat), PanAmSat submitted, under cover of its letter to the Bureau, dated February 8, 2002, a copy of its satellite construction contract with Orbital Sciences Corporation (the Contract). PanAmSat also filed a request for confidential treatment of the Contract. On February 19, 2002, Pegasus Development Corporation (Pegasus) filed a request to inspect the Contract pursuant to the Freedom of Information Act (FOIA).¹ Pegasus, together with any other individuals or entities that subsequently submit a request, pursuant to FOIA, to review the Contract are each hereafter referred to as a "Reviewing Party." Consequently, the Bureau has adopted this Protective Order to ensure that the Contract is afforded adequate protection. This Protective Order is intended to facilitate and expedite the review of contracts and exhibits, which may contain trade secrets and competitively sensitive information that is privileged and confidential. This Protective Order does not constitute a resolution on the merits concerning whether the contract and exhibits would be released publicly by the Commission under FOIA or other applicable law or regulation.

2. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Confidential Information" means any information contained in the Contract or derived therefrom that is not otherwise available from publicly available sources;

"Counsel" means In-House Counsel and Outside Counsel of Record;

"In-House Counsel" means the attorney or attorneys employed by Pegasus or a Reviewing Party or who is employed by an affiliated entity and who are actively engaged in the conduct of this proceeding, *provided that*, such counsel are not involved in competitive decision-making, *i.e.*, In-House Counsel's activities, association, and relationship with a client are not such as to involve such counsel's advice and

¹ 5 U.S.C. § 522, *et. seq.*

participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor; and

"Outside Counsel of Record" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing Pegasus or a Reviewing Party.

3. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for preparation and the conduct of this proceeding as delimited in this paragraph and paragraphs 5, 10, 11 and 12, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.

4. *Non-Disclosure of Confidential Information.* Except with the prior written consent of PanAmSat or as hereinafter provided under this Protective Order, no Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

5. *Permissible Disclosure.* Subject to the requirements of paragraph 8, Counsel may review Confidential Information. Subject to the requirements of paragraph 8, Counsel may disclose Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Counsel in this proceeding, *provided that*, the outside consultants or experts are not involved in the analysis underlying the business decisions of any competitor of PanAmSat nor do they participate directly in those business decisions; (2) paralegals or other employees of such Counsel not described in clause 3 of this paragraph 5 assisting Counsel in this proceeding; (3) employees of such Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (4) employees of third-party contractors performing one or more of the functions set forth in clause 3 of this paragraph 5. Individuals who have obtained access to Confidential Information in accordance with the provisions of this paragraph 5 and paragraph 8 may discuss and share the contents of the Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 5 and paragraph 8, and with the Commission and its staff.

6. *Protection of Confidential Information.* Persons described in paragraph 5 shall have the obligation to ensure that access to Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Confidential Information are used only as provided in this Protective Order; and (2) the Contract is not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10 below.

7. *Prohibited Copying.* If, in the judgment of PanAmSat, the Contract contains information so sensitive that it should not be copied by anyone, the relevant pages of the Contract shall bear the legend "Copying Prohibited," and no copies of such pages, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to PanAmSat.

8. *Procedures for Obtaining Access to Confidential Information.* In all cases where access to Confidential Information is permitted pursuant to paragraph 5, before reviewing or having access to any Confidential Information, each person seeking such access shall execute the Acknowledgment of Confidentiality ("Acknowledgment") (see Appendix B) and file it with the Bureau, on behalf of the Commission, and serve it upon PanAmSat so that the Acknowledgment is received by PanAmSat at least

five business days prior to such person's reviewing such Confidential Information. Where the person seeking access is one described in either clause 3 or 4 of paragraph 5, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. PanAmSat shall have an opportunity to object to the disclosure of the Contract to any such persons. Any objection must be filed with the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 3 or 4 of paragraph 5, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from PanAmSat shall not have access to Confidential Information. Upon receipt of an Acknowledgment and upon there being no objection to the person seeking access by PanAmSat, PanAmSat shall deliver a copy of the Contract to such person.

9. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

10. *Filings with the Commission.* Persons described in paragraph 5 may, in any documents that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedure:

a. Any portions of the pleadings that contains or discloses Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of pleadings that contain or disclose Confidential Information must be covered by a separate letter to the Secretary of the Commission, or to the Bureau referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this order must be clearly marked: "Confidential Information included pursuant to Protective Order, File Nos. IBFS SAT-LOA-19950929-00130/131 and SAT-LOA 19950929-00204/00208 and;

d. The confidential portion(s) of the pleading shall be served on the Secretary of the Commission, the Bureau, and PanAmSat. Such confidential portions shall be served under seal, and shall not be placed in the Commission's public file. A party filing a pleading containing Confidential Information shall also file redacted copies of the pleading containing no Confidential Information, which copies shall be placed in the Commission's public files. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission Staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

11. *Other Documents Prepared for this Proceeding.* Notes, internal memoranda and other documents produced by a reviewing party that contain Confidential Information must be prominently marked "CONTAINS CONFIDENTIAL INFORMATION PROTECTED PURSUANT TO PROTECTIVE ORDER, File No. IBFS SAT-LOA-19950929-00130/131; SAT-LOA-19950929-00204/00208" and at the termination of the proceeding shall be dealt with in accordance with the provisions of paragraph 16.

12. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent

judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Confidential Information.

13. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by PanAmSat of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by the Licensee shall not be deemed a waiver of any privilege or entitlement as long as the Licensee takes prompt remedial action.

14. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of the Contract or any Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify PanAmSat of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that PanAmSat has a full opportunity to oppose such production prior to the production or disclosure of the Contract or Confidential Information.

15. *Violations of Protective Order.* Should a person that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to PanAmSat. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to PanAmSat at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

16. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 5 shall destroy or return to the Licensee the Contract and all copies of the same. No material whatsoever derived from may be retained by any person having access thereto, except Counsel (as described in paragraph 5) may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information prepared on behalf of that party. All Counsel shall make certification of compliance herewith and shall deliver the same to Counsel for the Licensee not more than three weeks after conclusion of this proceeding. The provisions of this paragraph regarding retention of Stamped Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

17. *Authority.* This Protective Order is issued pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 552(b)(4); and authority delegated under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Fern Jarmulnek
Deputy Chief
Satellite and Radiocommunication Division

APPENDIX B**Acknowledgment of Confidentiality**

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in paragraph 5 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I hereby certify that I am not involved in “competitive decision-making” as that term is used in the definition of In-House Counsel in paragraph 2 of the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Confidential Information are used only as provided in the Protective Order; and (2) the Contract is not duplicated except as specifically permitted by the terms of paragraph 10 of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at _____ this ____ day of _____, ____.

[Name]

[Position]

[Address]

[Telephone]